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At any rate no such convention has been propounded in any of the precedents; it has been argued on first principles. Parliamentary privilege is a purely technical concept. Parliamentary privilege to be taken note of is the one that prevails in favour of the member of the House of Commons in England and that on 26th January 1950. Despite a period of two hours that were spent in propounding this matter not a single authority was cited by way of a precedent either from the rulings of the House of Commons or of any Legislatures in our Country. In this connection I may invite reference to the rulings given by me on 23rd December 1963 in a somewhat similar case.

*Re : Arrest of Sri M. S. Krishnan while the House was in Session.*

On 13th December 1967 Hon'ble Member Sri D. B. Kalmankar raised a matter of privilege that the arrest of Hon'ble Member Sri M. S. Krishnan on the same morning amounted to a breach of privilege as he was prevented from attending the meetings of the Assembly and discharging his functioning as a member.

The Commissioner of Police sent a communication of the fact of arrest of the Hon'ble Member and the same was communicated to the House.

Article 194 of the Constitution has defined certain privileges and has empowered the State Legislature to define the other privileges. The other privileges have not yet been defined and till they are defined, they will be the same as those of the Members of the House of Commons on 26th January 1950. The privileges of the members of the House of Commons are that they cannot be arrested under civil process when the House is in Session and forty days before and forty days after the Session; they should not also be molested when they are on their way to the House or on their way back home. This immunity does not extend to arrests under criminal processes of preventive detention. The Ramsay's case is a proof of this.

The same immunity applies to in India. Members are immune from civil arrest. There is no immunity in the case of arrest under criminal process. The arrest of the Hon'ble Member Sri M. S. Krishnan was for offences under the Indian Penal Code. Arrests under Indian Penal Code cannot be construed as arrests under civil process. The only obligation on the part of the Executive is that they should inform the Speaker of the arrest. In this case the Commissioner of Police sent a communication and the same was announced to the House.

Out side the House the law applies to every citizen equally including a member. A member has no higher status than any other citizen. If the executive authority has committed any excess or if the arrest is

illegal then remedies are open to the member as they are open to any other citizen. The House cannot take cognisance of things which have nothing to do with the proceedings of the House.

There is no statute in England dealing with this particular point. Text books or authoritative treatises like May's Parliamentary Practice are clear in laying down that the privilege does not give protection against a process in pursuance of criminal proceedings. In the first instance three books were referred to by me and later on a list of another 12 books and journals dealing with the point were also mentioned in the House. Books placed on the table in reading room may be perused. There is no qualification to the statement expounding the limits of privilege. I have viewed it from another aspect *viz.*, that if the initiation of the criminal proceedings was not *bona fide* and on the other hand alleged to be positively *mala fide* would this circumstance make any difference? In a multitude of instances of arrest that took place in England none lay down a claim to qualify the exemption *viz.*, that of the arrest is a result of *mala fide* proceedings in a criminal court the parliamentary privilege would arise and there would be a breach of the same. On the other hand privilege is an exception to the normal rule. The limits have to be found within the concepts. In that division is between criminal proceedings and non-criminal proceedings. There is no further sub-division with regard to the general nature of the criminal proceedings on the ground that if there is lack of *bona fide* or existence of *mala fide* the arrest would amount to a breach of privilege and therefore would come within the concept of breach of privilege. Nor even in India in any of the Legislatures has such a contention been accepted. The limits of the concept of parliamentary privilege is not to be finally adjudicated in a court of law unless in appropriate circumstances. The sovereign legislature is the sole master of finding out what parliamentary privilege is or what parliamentary privilege is not.

The matter also could be viewed from another aspect. The arrest stands *prima facie* legal. The effect of it is to be negatived by attributing *mala fides*. This has to be gathered not by an allegation but by finding the facts. The suggestion was however made that if this matter is referred to the Committee of Privileges they could summon everybody and decide as to how far there exists *bona fides* or *mala fides* in the matter. So till the facts are determined the question of privilege does not come. Whenever facts are in dispute the House cannot convert itself into a court to find facts and adjudicate. That is why the provision is made that whenever a member is arrested, it has to be brought to the notice of the Speaker and a corresponding duty is cast upon the Speaker to make an announcement in the House. Convention cannot be laid down by this House for the first time. It must be a convention which had existed in favour of the members of the House of Commons as on the relevant date. The crucial point therefore is as to whether there are any instances where such parliamentary privilege was alleged and upheld. Not a single

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instance has been mentioned; therefore it is not the opinion of this House or of the Committee with regard to the alleged bona fides or mala fides on the part of the Police that will determine the limits of the privilege. The full extent of the privilege has to be found from what has been prevailing in England. It is only when such a convention is found that any scope for enquiry by the privilege committee arises. To see whether in the instant case there has been any mala fides exist or not; nothing having been cited or shown regarding this aspect of the privilege as forming a part of privilege in the House of Commons, I hold that the matter is not in order.

*Re: A point of order raised by Sri K. H. Patil of the right of members to speak on the point of orders raised in the House.*

A point was raised by the Hon'ble Member Sri K. H. Patil that whenever a member raises a point of order it is the duty of the Speaker to hear all members in so far as they might have to make any statements on that point.

Art. 208 of the Constitution provides that a House of the Legislature may make rules for regulating, subject to the provisions of the Constitution, its procedure and the Conduct of its business. The Mysore Legislative Assembly has framed rules for the Conduct of its business. The proceedings in the House have therefore to be conducted according to these rules only. Rule 311 of the Mysore Legislative Assembly makes provision for raising points of order and for their disposal. A point of order shall relate to the interpretation or enforcement of the rules and such articles of the constitution as regulate the business of the House. It should be within the cognisance of Speaker. It also relate to the business before the House at the moment. It can also be raised in a vacuum provided it relates to the maintainance of order or arrangement of Business. The Speaker has to give a ruling on a point of order and before giving a ruling he may, if he thinks fit, hear members. No debate shall be allowed. Speaker is not bound to hear other members. He can hear only if he wants to. The number of members to be called by the Speaker may depend on the importance of the matter raised. According to the rule it is therefore clear no member can claim it as a right to speak on a point of order raised by another member.

Rule 286 provides that a member may speak if the Speaker calls his name. If his name is not called a member does not get a right to speak. There is no absolute right in a member to speak without being called by the Speaker. Even if a member wants to raise a point of order the Speaker has to permit. No point of Order can be raised when the Speaker is on his legs.

Rule 294 provides that members other than a mover of a motion may speak on the motion in such order as the Speaker may call them. If the Speaker does not call a member cannot speak. The rule also